UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Jon S. Tigar, Judge

KEITH THOMAS, et al., Plaintiffs,

VS.

MAGNACHIP SEMICONDUCTOR CORP., ET AL., Defendants.

NO. C 14-01160 JST

OKLAHOMA POLICE PENSION & RETIREMENT SYSTEM, Plaintiffs,

VS.

MAGNACHIP SEMICONDUCTOR CORPORATION, ET AL., Defendants.

NO. C 15-01797 JST

San Francisco, California
Thursday, June 11, 2015

TRANSCRIPT OF PROCEEDINGS

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Thursday - June 11, 2015 **2:05 p.m.**

P R O C E E D I N G S

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THE CLERK: Calling civil cases 14-1160, Keith Thomas, et al. versus MagnaChip Semiconductor Corp, et al., and case 15-1797, Oklahoma Police Pension & Retirement System versus MagnaChip Semiconductor Corporation, et al.

Counsel, will you please make your appearances for the record.

MR. GROSS: Good afternoon, Your Honor. Mark Gross, Pomerantz LLP, on behalf of lead plaintiff Keith Thomas.

MS. MYERS: Good afternoon, Your Honor. Danielle Myers from Robbins, Geller, Rudman & Dowd on behalf of Oklahoma Police Pension & Retirement System.

THE COURT: Very good. And Sunny, S-U-N-N-Y, Sarkis is also here on behalf of the same party; is that true?

MS. SARKIS: Yes.

THE COURT: Very good. Welcome.

MR. KRAMER: Your Honor, good afternoon. Dan Kramer from Paul, Weiss for defendant MagnaChip, and with me is my colleague Meredith Arfa.

THE COURT: Welcome.

MR. TANG: Good afternoon, Your Honor. John Tang from Jones Day on behalf of defendant MagnaChip. With me is my colleague Kelsey Israel Trummel.

THE COURT: Welcome.

MR. TANG: Thank you.

MR. TAKENOUCHI: Good afternoon, Your Honor. Jason Takenouchi of Kasowitz, Benson, Torres & Friedman, on behalf of defendant Nader Tavakoli.

THE COURT: And recently to the case, I gather.

MR. TAKENOUCHI: Yes. I will be added to the case -- notice of appearance will be filed today or tomorrow.

THE COURT: Terrific. Welcome.

MR. TAKENOUCHI: Thank you.

MR. RUEHE: Good afternoon, Your Honor. Eric Ruehe for Akin, Gump for defendants Avenue Capital, Randal Klein, and Michael Elkins.

THE COURT: Welcome. So the matter is on calendar today because a motion to consolidate these actions was filed. But the motion to consolidate raises several other procedural and case management issues, and among them whether the Court should require the giving of new notice per the appointment of lead counsel; if the cases are consolidated, how to handle the one Oklahoma Police Pension case that is not included in the lead plaintiff's complaint, and so forth.

I don't often post tentative rulings, but I did it in this case, or I tried to do it. Did it work?

MR. GROSS: Yes.

THE COURT: Okay. It worked. And the reason for that was primarily to make sure that if the Court adopted its tentative ruling, that the parties had a chance to raise, and I had a chance to decide, any case management issues that might arise from the adoption of that tentative ruling.

Now, it doesn't -- but the issuance of a tentative ruling was not meant to try to talk anybody out of arguing their position on the motion. I always or almost always have a tentative ruling when I take the bench, I just don't share it with people, and sometimes the arguments change my thinking and sometimes they don't. The difference in this case is not that I don't have a tentative ruling, and it's not that it's been reduced to writing, it's that you have a copy of it.

So, in that spirit, why don't I start with the Oklahoma Police Pension & Retirement System and see if it would like to be heard this afternoon.

MS. MYERS: Yes, Your Honor. Thank you.

I was going to suggest that I go first, because I have a feeling that everybody else agrees with the tentative.

And may it please the Court, Danielle Myers with Robbins, Geller on behalf of Oklahoma Police Pension & Retirement System.

The one area of the tentative that I'd like to focus the Court on is the republication of notice and the impact of case management questions posed by that. And we want to clarify one point. In lead plaintiff's reply brief they requested that the

Court deny our motion for republication, which I want to make sure the Court understands we did not file a motion for republication. The only motion on file right now was the motion to consolidate.

THE COURT: Yes.

MS. MYERS: So I want to clarify that one nuance.

THE COURT: Would you like to know what your opponent's two strongest points were?

MS. MYERS: I have a feeling I know what their two strongest points were.

THE COURT: If I were you I would, because that's what animates the Court's tentative ruling.

The first is that Oklahoma had a chance to raise its entity, the lead plaintiff, before, and it didn't, and how much weight to give that fact is an art, not a science. But I gave it a lot, and that's not something that you really address in your papers.

The other thing -- and I couldn't really tell if this was just sort of a hat trick, and a pretty good one, or whether it was entitled to more significant weight -- is your opponent in this context, your co-counsel in other contexts, but your opponents having attached a list of 50 cases in which the class period had been expanded, and when you were in the driver's seat as lead plaintiff's counsel you had not suggested to the Court that republication was appropriate, and that's also something that your papers didn't address, and so there you have it.

MS. MYERS: I can deal with both of those, Your Honor.

First, I'd like to deal with the why didn't we move before. And one of the things that the Court might have noticed from our complaint is there is a new claim. And when we gave notice to the class, which the notice was given pursuant to the statute which requires a notice to go out when a new claim is filed, we notified all class members of the new '33 Act claim, so those motions are due in --

THE COURT: Oh, I beg your pardon. There's one more thing that I should have told you before. Mr. Gross says it's time barred.

MS. MYERS: Right.

THE COURT: So there's that.

MS. MYERS: Right. So we issued the notice because of the new '33 Act claim, which the statute requires notice to be given to the class when there's new claims. We would note that in their second complaint there is a new claim, which the Court noted in the tentative that there were no new claims or new plaintiffs, and I want to call the Court's attention to the fact that there are new claims and plaintiffs, because there's a 20 big A claim, and what the 20 big A versus the 20 little a claim is, it's a contemporaneous trading claim which requires a plaintiff to have bought or sold contemporaneously when a defendant buys or sells. No notice of that claim, which was added by the lead plaintiff, was ever given to those shareholders. That is a different class of shareholders, there's different damages, different elements to the claim.

In addition, when our client filed its complaint, the section 11 claim -- totally different elements, totally different claim -- you have to have standing separate and apart from the 10(b) claim, which is different, totally different defendants. So there are, respectfully, new claims and new classes of plaintiffs that required notice, so we would call the Court's attention to that nuanced fact, in addition to the fact that people who purchased for an entire year before the original class period were never given notice and would have disregarded that notice, and people who purchased for an entire year after the original class period would have disregarded that notice. So we respectfully submit that the nuance that the Court noticed in the tentative order actually does apply here. There are new claims and new classes of plaintiffs. So that's one of the points.

The second point was the 50 cases, the list of 50 cases that my firm --

THE COURT: I think the next -- I think more important than that point is the question of why Oklahoma Police or Robbins, Geller have not before sought lead plaintiff status. Why the delay? Right? You get notice. Pomerantz sends out notice, and they don't -- and no one does anything, and here you are.

MS. MYERS: Well, Your Honor, my client has a section 11 claim that was not raised, so that's one of the reasons why Oklahoma Police came forward now. As Your Honor may recognize that their restatement was recently finished and announced, so it wasn't until February of this year that any investors actually had the facts before them as to what happened in this restatement. It wasn't until February of this year that anyone knew that it was $150 million reversal. No one knew the details of what happened. They filed 150-page Form 10-K detailing what happened in their investigation. That took them the better part of almost a year to uncover what happened in the three-year period that they restated.

THE COURT: Would it be an accurate distillation of your point to say that until the restatement occurred, no one knew what was at stake in the litigation?

MS. MYERS: I think that's an accurate statement, Your Honor.

THE COURT: Will Mr. Gross say it's an oversimplification?

MS. MYERS: He will, because he will say --

THE COURT: Then respond to that argument.

MS. MYERS: He will. He will say that everyone knew when his original complaint was filed that it was a three-year restatement, which is accurate. No one knew why, how, how big. Restatements happen not regularly, but they happen, and there can be minor adjustments where they're not material. It's a million-dollar adjustment.

THE COURT: What will Mr. Gross say, do you think, regarding the information that was already available regarding the probable size of the restatement?

MS. MYERS: There was no indication from the company as to the probable size; and, in fact, the company said numerous times we don't know -- we're still doing our investigation. We're still doing our investigation. We're still investigating. So there was no indication to the market, the magnitude of the harm.

And if I can point Your Honor to their very own complaint, when the restatement itself was announced there was about a 12-to 15 percent drop in the stock price initially a year ago when the company said we discovered an anomaly, we're looking into it, we formed a committee, and we've hired some people, we'll get back to you.

Fast forward a year. That investigation is now done. It turns out it's 150 million-dollar error. Stock drop is 50 percent. That's significant, Your Honor, and especially under the Ninth Circuit's decision in *Loos versus Immersion*, which occurred within the last year or so, I believe.

That changes the game in terms of loss causation after the announcement of an investigation by a company into something like a restatement; and we expect that when defendants make that key point in their motions to dismiss, meaning after the first announcement of a mere investigation, which is what the Ninth Circuit talked about in the *Loos* case, it's L-O-O-S, that may or may not be sufficient to trigger loss causation and support loss causation. So that's something that the Court is going to be able to see in the near future from the defendants on motions to dismiss.

So, in response to the timeliness question and why my client didn't file earlier, it wasn't until February of this year that the facts were available to investors to know what happened with this company. That's when it became apparent that there was a basis to file a section 11 claim, and after February when they finished their investigation and revealed to investors what actually happened during those years.

So that's why we believe that there isn't a timeliness defense, because the complaint was filed in April, two months after the investigation was concluded. You have a one-year time period. It was clearly filed within a year of discovery of those facts. So we believe it is a defense that they'll raise, and we expect them to be vigorous about it, but we're confident that we'll have responses to it at the motion to dismiss stage, and that it's premature to say that it is actually time barred on its face.

I would like to turn to the response to the 50 cases.

THE COURT: Yes.

MS. MYERS: I would note that in the version that we saw that was e-filed and served on us, there actually wasn't a list of 50 cases, so we don't know what those cases are.

But, I can say if the class period was the only thing that was changed, we admitted in our opposition brief that the courts were unanimous: The mere alteration of a class period doesn't require renotice, doesn't require reopening of a lead plaintiff. And we embraced that law and acknowledged it in our opposition. When all that's changed is a mere day, weeks, months to the class period, no new notice is required, and all the courts agree on that. But that's not what happened here.

We have a tripling of the class period. We have the addition of almost three times as many defendants, certainly double the defendants. We have a brand new claim, the 20 big A claim, insider trading claim, which is a new class of plaintiffs. It's a new group of defendants. They admit, they being the lead plaintiff admits, in their brief that they added a major new defendant. That's their words, Your Honor, not mine: Major new defendant. It's a 300 million insider trading claim against them. That's a big claim when you consider that the restatement is 150 million-dollar restatement.

When you have circumstances like happened in this case where you have a tripling of the class period combined with a doubling of a defendant, a major new defendant, combined with the addition of a new claim, the 20 big A claim which has different elements, different class of shareholders, different damages, that's when the courts step back and say yes, those shareholders need notice, because it's possible that someone who has a larger financial interest who didn't have notice before will step forward and will lead this case. And it's in the interest of the PSLRA, which was designed to stop the race to the courthouse and lawyer-driven litigation, to allow shareholders who have a large financial interest to come in and take charge, and that's what we submit the Court should allow.

We have a new claim as well, a section 11 claim, and in the section 11 claim shareholders were never given notice before we gave them notice. So we would submit that because the notice is out there in our case and lead plaintiff motions will be filed on the 22nd, it makes sense to consolidate the cases, as the Court has done, but allow those motions to be filed on the 22nd. And at that point in time the Court and Mr. Thomas, he's free to move, will be in a much better position to decide whether anyone who didn't have notice of the claims before in the longer period, or the 20 big A claim or the section 11 claim, steps forward and says I want to be lead plaintiff. And at that point in time the Court can decide whether it makes sense to keep in place the original order or to alter it or amend it. But only until after the 22nd when those motions are filed will the Court and Mr. Thomas be in a good position to say why that should or shouldn't happen. So we would suggest to the Court that it's about 11 days too soon to just decide that one piece of the order.

There's three decisions that, Your Honor, I apologize for not citing in our papers, because they -- we were responding to the motion to consolidate. We weren't seeking leave to republish the notice, so we didn't cite these cases in our papers. But I would like to direct the Court, when it goes back and reassesses its tentative after the argument today, there's three cases that specifically deal with a situation like before this Court where you have a lead plaintiff appointed, a bigger case is filed with new claims, different class period, sometimes the same defendant, sometimes not, and a court was asked, well, what do you do with that old lead plaintiff order? Do I allow the old lead plaintiff to just say nope, I was already -- I was first, I'm here, we're not going to allow a new lead plaintiff? What do you do?

And there's three cases I'd like to draw the Court to: The *Lucent* case, L-U-C-E-N-T, it's 221 F. Supp. 2d 472, that's from the district of New Jersey in 2001, it's Judge Lechner. The second case is the *Olsten* case, O-L-S-T-E-N, it's 3 F. Supp. 2d 286 from the Eastern District of New York, 1998, that's Magistrate Boyle; and then there's an unreported decision, which I have copies and I will leave with the Court, *Strong versus ArthroCare*, it's Case No. A-08-CA-574 from the Western District of Texas in 2008, Judge Sparks, and in each of these three cases there was --

THE COURT: Do you happen to have a LEXIS or a Westlaw number?

MS. MYERS: I do not, Your Honor. It is not electronically published. I have a copy of the slip opinion.

THE COURT: I see. What is the date?

MS. MYERS: December 10th, 2008, Your Honor.

THE COURT: Thank you.

MS. MYERS: In each of these cases the Court allowed the second lead plaintiff motions to be filed and, after those motions were filed, considered the arguments of the first lead plaintiff and weighed them against the new lead plaintiffs and decided the new lead plaintiffs had bigger interests; in some cases they allowed both lead plaintiffs to continue and appointed co-lead plaintiffs; in some cases they just appointed the investor with the largest financial interest --

THE COURT: Based on the things your law firms have said about each other so far, I don't know that that would work.

MS. MYERS: Despite our emotions, Mr. Gross' firm and my firm have a history of working together, so I have no doubt that we would be able to -- be able to compromise on this, if the Court would like to appoint us together.

But we would submit that these three cases suggest that the Court has support and authority for allowing the second motions to be filed and waiting until that point to decide what to do with the lead plaintiff decision. And so we would urge the Court to just -- that it's premature to decide just that piece of the tentative decision, and that the Court and Mr. Thomas will be more informed about whether there's anyone in the new period with the new claims that didn't have an opportunity to move before. The answer to that will be very clear on June 22nd. So we respectfully ask the Court to allow the motions to be filed on the 22nd.

THE COURT: Thank you, Ms. Myers.

MS. MYERS: Thank you.

THE COURT: Mr. Gross.

MR. GROSS: Thank you, Your Honor.

I'm sure it's evident to the Court that Oklahoma has not brought any real new factual issues to this Court's attention. Indeed, their complaint is of -- their minimum of what ours, intensive, an exhaustive 60-page complaint has analyzed with all the claims here.

And moreover, their claims are not for a different period, they are for the same period, an offering that was made during our initial class period that ended on March 2014. All they have done is add a specific Securities Act claim that could have and certainly was covered by -- could have been asserted and was covered by the time frame of our very first complaint.

The notion that the notice that was published at that time would not have alerted them to the need to come forward at that point, I find that be to be somewhat weak. And I'll leave it to Mr. Kramer to defend whether or not the fact that they've waited this long should somehow allow them to bring the claim simply because there was a quantification of the size of the loss in February of 2015.

I had professional skepticism about the viability of that claim, and, frankly, that is why we have proposed and continue to propose a compromise whereby if Oklahoma feels as certain about that claim, and it is a new claim that we have not asserted, that they should be the ones defending it. And we propose that we would drop that claim into a consolidated complaint that we could file by next week, and that would simply be a new count. There's no new factual allegations that need to be stated, other than the specific misrepresentations that were in that registration statement, which undoubtedly were already part of our preexisting case, and they could then defend that case, and they could make sure that Oklahoma's interests are adequately represented. I believe that would be the more appropriate way to resolve this.

Moreover, the suggestion that we should postpone any further action in this case pending the outcome of the lead plaintiff motions that now they have opened the Pandora's box for and said, okay, everybody can file ten days from now new motions, well, we've been waiting for quite a while to get this case going. We were ready to go last September, and it simply is -- we thought the First Amended Complaint that we filed at that time would have been sufficient to withstand any motion to dismiss.

And contrary to Ms. Myers' representation, there was a new defendant added at that time, the Avenue Capital, the controlling interest who had a 70 percent interest in the case -- in the company was added back then, so it's not a matter that they were first alerted back now in February to the impossibility of bringing Avenue Capital in. We recognize they were the deep pocket in this case, that they were the ones who benefited the most from all of these machinations by having sold the $300 million worth of stock. We added them at that time, so there's nothing -- a reason why that would be cause.

But as I was saying, we've waited quite a while. We accommodated the defendants back in October of 2014, because they suggested that well, you know, if there's any deficiencies in our complaint, and we didn't think there were, that well, once they filed the restatement, that that would certainly give us further ammunition, and so we waited.

And now, because we accommodated the defendants, we're being confronted with the possibility that well, a whole new set of characters will come in, you'll have to spend two or three months figuring out who are the lead plaintiffs appropriated, who has the largest financial interest. I've been through this many times, as Robbins, Geller. And those can be very interesting disputes, because how will you measure the actual loss that's been incurred and whether or not it's transactional losses, whether it's FIFO, LIFO, it's an art, and indeed I hope we will have a little more rationalization of it one of these days. But nonetheless, it will delay the litigation here considerably, which has already been delayed.

We are ready to get going, and so we would urge that Your Honor sit with your opinion that no republication of notice was warranted, that anybody who was filing the case, to the extent that they have brought some new claim for either an earlier offering or some other thing, well, let's consider it, but we don't have to restart this whole process again. Let's just move -- get the case going forward at this belated time.

If I might just add a couple of points. Yes, the Second Amended Complaint did add an insider trading claim 28. Frankly, it came to me, because Mr. Kramer and I are babbling through the SAC Steve Cohen case, which is the largest insider trading case, and it occurred to me well, I better look and see if there was any contemporaneous trading, and lo and behold coincidentally there was. But frankly, we felt that that was a protection device. But I am not certain that at the end of the day, if we're correct with regard to the original 10(b) claims, that it will necessarily recoup any greater money. It just gives us another bullet in the barrel, whatever it is, for us to be able to go through. But nonetheless, I don't believe that additional claim that we added in February of 2015 warrants any new notice.

In terms of the suggestion that, well, there was a quantification of a significant amount in February 2015 that warrants a reexamination of the lead plaintiff, well, the fact remains is that, one, we understood once there is an announcement by a company that it has to restate, that is the admission that it's a material misstatement. So you already -- all you need to know is that it passes the materiality threshold. You don't have to wait and determine whether or not it's a 50 million, 100 million. Whatever it is, the accountants have told them we're not going to do anything until you restate.

Moreover, in November 2014, as set forth in paragraph 100 of our complaint, there was a detailed description of all the accounting machinations that were going on. And if Oklahoma was really looking out for its interests at that point, it could have filed the '33 Act claim perhaps at that point and still come within the statute of limitations window. But nonetheless, it ignored that, and I still haven't heard what I think is a colorable explanation as to why you would wait when you know the statute of limitations is running. Usually the lawyers are told that we're shooting too quickly. The fact that they were restrained, well, that's an interesting notion.

The only other point that I heard, other than these three cases, which I -- you know, if the Court would like, which we could certainly supplement the pleading, the briefing on, but I frankly would again prefer that this get going --

THE COURT: Do you have any objection to my reading those cases, because I really want to.

MR. GROSS: Well --

THE COURT: And I tell you that because typically when I see new argument on reply or new facts on reply or someone comes to the hearing and they have cases that they didn't cite, I say I'm not interested, I'm not going to read your cases, because I'm concerned about fairness to the other side. I don't mind doing the work, but it's not fair.

But in this instance it seems to me that the decision is so fact bound that the more decisions of other district court judges that I read, the more likely I am to be comfortable with whatever resolution I reach.

So I want to read Ms. Myers' cases. And my question to you is do you have any objection to doing that? Do you want to give me three new cases? I mean, if I'm going to read them, is there anything else I need to do?

MR. GROSS: Well, I've never been asked by a judge whether or not I would object. It's usually being ruled against me if I'm objecting, but of course --

THE COURT: I could rule against you if it makes you more comfortable.

(Laughter)

MR. GROSS: I appreciate that, Your Honor.

No, I certainly would encourage Your Honor to read whatever is appropriate, and I would only ask that we be given an opportunity to make a quick submission by sometime late on Monday that outlines why we believe that this is consistent with the cases that were previously cited by the Robbins, Geller firm as to what is the point at which -- the tipping point I guess is what I'm trying to say -- when a new publication is warranted? And I think Your Honor cited a lot of that. The *CyberGuard* case really has an excellent discussion about -- in *CyberGuard*, the Court ended up telling that there should be republication, but that was because there was a whole new set of securities that were suddenly brought into the case. And the Court held that well, while the lead plaintiff that had been appointed was appropriate for the securities that were at issue, there was uncertainty as to whether it should be allowed to represent other securities as well.

We don't have that in this instance, the securities -- it's only common stock, different claims perhaps rising out of those, but nonetheless it's the same securities. And frankly, Oklahoma should have been pushing for the 10(b) -- could have filed a 10(b) claim back in 2014 if it so chose, and so therefore whether it happens to be a '33 Act claim or a '34 Act claim, it's pretty much the same facts.

Ms. Myers did cite the *Vanleeuwen* case, which is the one Ninth Circuit case on this. *Vanleeuwen* is clearly different. It involved the case originally brought on open market purchases, and suddenly they decided to bring a case on behalf of private placement holders. That's -- open market purchaser has no standing with regard to private placement. It's an entirely different type of transaction. And in that case I think the court ruled appropriately that notice should be given to prior replacement holders to see who should be best representing their interests here.

So if I might conclude, Your Honor --

THE COURT: Is the essence of that point that you're -- once you acknowledge, as Ms. Myers has, that an extension of the class period by itself is not sufficient to trigger republication, that if the only reason you have different plaintiffs is because the class period has been extended, that also is not reason to trigger republication, and these various claims and so forth all benefit the same plaintiffs.

MR. GROSS: Right.

THE COURT: How am I doing?

MR. GROSS: I think we're on -- I think as you've articulated --

THE COURT: I gave her a softball like that. I figured I should give you one also.

MR. GROSS: Yeah, I appreciate that. No, not only do I agree with you, but I believe that from a policy standpoint -- you know, these cases are hard to get off the ground. They are notoriously long in litigation. And if Your Honor is to find that in this case extending the class period --

THE COURT: Brightest, sunniest day of the week --

MR. GROSS: I'm sorry?

THE COURT: Brightest, sunniest day of the week, your client just bought a new shirt when she -- when he or she finishes testifying, the jury is crying, the other side's case is in a shambles, the trial has gone so well for you, you're bragging about it on the phone every day when you get back to the hotel. At that trial, what is this case worth?

MR. GROSS: You're asking me -- and I just want to be clear because you went off on a tangent. I'm not quite -- I want to make sure that I understand where you're coming from, Your Honor.

THE COURT: I overelaborated the point. My question for you is on your best day what is the case worth?

MR. GROSS: On my best day this is a $300 million case.

THE COURT: Okay. How much longer do you think it makes the case to do republication?

MR. GROSS: I'd say it could be, between republication --

THE COURT: And on this one don't give me the best answer that works for you, give me a conservative and credible. 90 days? 60 days?

MR. GROSS: No, look, I'd say at least 90 days, because you've got 60 days --

THE COURT: Okay. You've made that point many times. It's not your best point.

MR. GROSS: Oh.

THE COURT: In a $300 million case, retaining your perch at the expense of 90 days is not your best point. She didn't raise her hand for a year, that's a good point.

MR. GROSS: Well, I appreciate, Your Honor. But, may I -- and at the sake of digging my grave further, if, in fact, each time there is a new announcement by a company and the need perhaps to add additional claims or have another class period, then you're going to have serial lead plaintiff motions. You're inviting them along the way. And while I think there should be a bias -- and I'm trying to think of a better word than that -- against allowing that, there should be a presumption that the first time around that's sufficient, and only in extraordinary situations should you now reopen it once again. Because, believe me, plaintiff's counsels are very clever, and if you allow that to happen -- I'm self serving here, I'm sorry, as is my counsel very clever.

THE COURT: The word "clever" is not without some nuance, but yes.

MR. GROSS: Yes, I appreciate. And it's a term of art, perhaps, but one where if you open that door, then counsel will find other opportunities to, one, every time there's a new amended complaint, to see do I have a larger client who might be able to jump in on this that I overlooked the first time around, or that came to me during the marketing at a subsequent point.

If I may, I will step down, Your Honor, unless there are any other questions.

THE COURT: No, thank you. Ms. Myers, since you find yourself on the wrong end of the tentative, you can have the last word if you'd like.

MS. MYERS: I'm surprised the defendants don't have anything to say.

THE COURT: Oh, no, they're watching.

MS. MYERS: Taking notes for class certification, no doubt.

THE COURT: I can't speak for them, but --

MS. MYERS: I've given them arguments for motions to dismiss in class cert.

THE COURT: I don't think they have a dog in this fight, if they have one at all, and that they have good seats. So anyway --

MS. MYERS: Yes, absolutely. I just have one point, Your Honor, and I'll be very brief.

THE COURT: Yes.

MS. MYERS: My colleague mentioned a considerable delay, which I know the Court said was his weakest point. I would just like to point out the Court has a 35-day motion rule, so we're talking about 35 days from June 22nd, which I checked the Court's calendar yesterday and the Court has July 30th available at 2 p.m., which would be the hearing date for the lead plaintiff motions, so potentially before the end of the summer this could be decided and settled.

THE COURT: I see. All right. Thank you.

MS. MYERS: Thank you.

THE COURT: Mr. Gross, I know I told Ms. Myers she could have the last word, but if you think her math was wrong you could tell me that.

MR. GROSS: I am very challenged on math, so I will defer to her.

THE COURT: Very good. Okay. Thank you. So, well, thank you both for those arguments. I'll take that question under submission.

Are there other issues, case management or otherwise, whether they were addressed by the Court's tentative ruling or not, that I should be discussing, and would any of defense counsel like to make any argument on the issues that we have already discussed?

MS. MYERS: Your Honor, just very briefly if I can address maybe something that they're going to say.

We, in our Oklahoma Police case, have filed some waivers of service and will be, if we haven't already, be filing extensions for the defendants to respond to allow for this issue to be resolved, so that there is coordination and no duplication of effort by either of the defendants or the Court.

THE COURT: Thank you.

MR. KRAMER: Your Honor, Dan Kramer from Paul, Weiss for MagnaChip.

You're correct. Unless you have questions for us on the substance, we'll rest on our papers.

I have a comment on the process, but on the substance we would rest on our papers.

On the process, I just want to remind the Court, which you probably don't need reminding, there's a May 7th order in this case.

THE COURT: Yes, I have a copy at the bench.

MR. KRAMER: Terrific, okay.

THE COURT: Which is why the Order doesn't -- this tentative doesn't say anything further about how many days and so forth, because I think it's in the prior order.

MR. KRAMER: Terrific. I just wanted to clarify that. Thank you, Your Honor.

THE COURT: All right. Although if my law clerk hadn't reminded me of that yesterday afternoon, there would have been something in this Order, so fortunately I didn't have to rely on my own memory.

MR. KRAMER: Right. So it all works together. Thank you.

THE COURT: Okay. Thank you.

Mr. Gross, your office is in Manhattan, is it not?

MR. GROSS: It is, Your Honor.

THE COURT: Then you may have until 5:00 p.m. EDT on Monday to file something of not longer than three pages that just says why the three cases that Ms. Myers cited me will not be helpful to the Court. And she's going to give you a copy of that slip opinion, and she's going to give one to my courtroom deputy, and if any of the defendants want it, she'll give one to them too.

Further matters for discussion this afternoon? Hearing none, the Court is in recess, thank you.

ALL COUNSEL: Thank you, Your Honor.

(Proceedings adjourned at 2:43 p.m.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

DATE: Tuesday, June 16, 2015

Rhonda L. Aquilina, CSR No. 9956, RMR, CRR
Court Reporter